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No. 94-825

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

WANDA SUE BRANDON,

Petitioner,

v.

THE TRAVELERS INSURANCE COMPANY, AND ABBOTT LABORATORIES, ABBOTT LABORATORIES, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. In light of ERISA's silence on a beneficiary's ability to waive rights in a benefit plan, may the federal courts fashion federal common law to address this issue?

2. Does ERISA require a federal court to refuse to give full faith and credit to a state divorce decree?

LIST OF PARTIES

Wanda Sue Brandon is the Petitioner in this case. The parent company of Respondent The Travelers Insurance Company is The Travelers, Inc. Respondent Travelers has no subsidiaries that are not wholly-owned. Respondent Abbott Laboratories[1] does not have a parent company, and it has no subsidiaries that are not wholly-owned.

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[1] Mrs. Brandon originally sued "Abbott Laboratories, Inc." In fact, the proper name for the Abbott Respondent is Abbott Laboratories.

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

When Wanda Sue and Richard Brandon divorced in 1988, Wanda Sue reaped the benefits of a divorce settlement under which she, admittedly, received "quite a bit more than" Richard. (*Record,* pp. 516-17) The house, a 280ZX, and most of the couple's furniture were hers. (*Record,* p. 109) Although her petition before this Court alleges that she did not agree to the divorce decree in question, Mrs. Brandon's sworn testimony in her deposition tells the true story: "we agreed on everything." (*Record,* p. 99) "Did you read through [a copy of the divorce decree]? Yes. Did it reflect the agreement that you had with Richard Brandon? Yes. Was there *anything* in there that you disagreed with in the decree of divorce? No." (*Record,* p. 101) (emphasis added)

Along with the many benefits of the divorce settlement, Mrs. Brandon agreed to what she now perceives as a detriment: "[Wanda Sue Brandon] is divested of all rights, title, interest and claim in and to [the following] property: . . . Any and all sums . . . and any other rights relating to any . . . other benefit program existing by reason of [Richard Brandon's] past, present, or future employment." (*Record*, p. 108) Richard was similarly divested of his rights in Wanda Sue's employment benefits. (*Record*, p. 109) The Brandon divorce court "approve[d] the property settlement agreement" of the couple, no one ever appealed the decree, and it has long since become final. (*Record*, pp. 102, 517, 519) Richard Brandon died the next year.

Many months before the divorce hearing, Richard went to work for Respondent Abbott Laboratories. As one of his employee benefits, he received a $110,000 life insurance policy purchased through Respondent Travelers Insurance Company. At that time, he filled out a card designating his wife as primary beneficiary and his brother, Gary Brandon, as contingent beneficiary.[2] (*Record*, pp. 453, 457, 479). After his divorce, Richard Brandon never redesignated his ex-wife as a beneficiary.

Despite her waiver, Mrs. Brandon sought to recover those life insurance (and other)[3] proceeds after Richard's untimely death. When Respondents learned of the divorce decree, Travelers paid Gary Brandon, the designated contingent beneficiary, the proceeds of that policy. Wanda Sue Brandon, apparently unwilling to live by the agreement she made when Richard was alive, has filed this suit after his death.[4]

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[2] On at least one of the plans for which he enrolled, Richard would have had to get his wife's written permission to designate anyone other than she. (*Record*, p. 479)

[3] Mrs. Brandon originally sued to recover the life insurance proceeds, as well as stock option and retirement benefits worth a few thousand dollars. Her petition for certiorari discusses only the life insurance, so this response will be similarly limited.

[4] The State Farm insurance policy discussed in Petitioner's statement of the case had nothing to do with either of the Respondents and, thus, is wholly irrelevant.

SUMMARY OF ARGUMENT

ERISA does not address the question of whether a beneficiary such as Mrs. Brandon can waive her rights to life insurance proceeds. Therefore, like the Fifth Circuit did in this case, it is appropriate to fashion a federal common law to address this question that gives deference to state domestic relations laws. All circuit courts that have applied federal common law to this situation have held that a knowing waiver is enforceable. Mrs. Brandon's divorce decree waiver can and should be enforced under federal common law.

Alternatively, the federal courts should give full faith and credit to the Brandon divorce decree. Under this decree, Mrs. Brandon was divested of "all rights . . . relating to any . . . other benefit program existing by reason of [her ex-husband's] past, present, or future employment . . . ." Petitioner cites no cases that state that the full faith and credit clause is preempted or otherwise affected by ERISA. Indeed, ERISA expressly states that it does not preempt other federal laws.

REASONS FOR DENYING THE WRIT

I. Mrs. Brandon's Waiver Can and Should Be Enforced.

A. Where ERISA Leaves a Gap, Federal Courts Should Fashion Federal Common Law, Giving Deference to State Domestic Relations Laws.

"[W]e have held that courts are to develop a 'federal common law of rights and obligations under ERISA-regulated plans.' " *Firestone Tire and Rubber Co. v. Bruch,* 489 U.S. 101, 110 (1989) (quoting *Pilot Life Ins. Co. v. Dedeaux,* 481 U.S. 41, 56 (1987)). In keeping with this mandate, several federal courts have developed federal common law to fill in the gap left by ERISA in the area of settlement and waiver. *Leavitt v. Northwestern Bell Telephone Co.,* 921 F.2d 160 (8th Cir. 1990); *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown,* 897 F.2d 275 (7th Cir.) (en banc), *cert. denied,* 498 U.S. 820 (1990); *Lyman*

Lumber Co. v. Hill, 877 F.2d 692 (8th Cir. 1989); *Stobnicki v. Textron, Inc.,* 868 F.2d 1460 (5th Cir. 1989). These cases hold that knowing, voluntary waivers or settlements of ERISA rights and claims should be enforced under federal common law.

Against this backdrop, the Fifth Circuit addressed the question in this case: could and did Mrs. Brandon waive her rights to her ex-husband's employee benefits? Consistent with *Bruch's* directive, the Fifth Circuit applied federal common law to this question, using Texas law as a guide.[5] The court held that enforcing Mrs. Brandon's divorce decree waiver, consistent with Texas law, was "preferable to asserting that ERISA should act as a surrogate law of divorce." *Brandon v. Travelers Ins. Co.,* 18 F.3d 1321, 1327 (5th Cir. 1994).

The Fifth Circuit's approach is particularly appropriate because of the traditional deference of federal courts to state domestic relations laws. "Federal respect for state domestic relations law has a long and venerable history." *Id.* at 1326. This Court has repeatedly emphasized that great deference should be given to state domestic relations laws:

> We have consistently recognized that '[t]he whole subject of the domestic relations of husband and wife, . . . belongs to the laws of the States and not to the laws of the United States.' . . . 'On the rare occasion when state family law has come into conflict with a federal statute, this Court has limited review under the Supremacy Clause to a determination whether Congress has "positively required by direct enactment" that

[5] Under Texas law, a divorce voids a prior beneficiary designation unless (1) the divorce decree provides otherwise; (2) the spouse re-designates the ex-spouse as a beneficiary; or (3) the proceeds are to be placed in trust for the employee's child. Tex. Fam. Code Ann. §§ 3.632, 3.633 (Vernon 1993).

> state law be pre-empted.' . . . Before a state law governing domestic relations will be overridden, it 'must do "major damage" to "clear and substantial" federal interests.'

Rose v. Rose, 481 U.S. 619, 625 (1987).[6] These principles have been applied to ERISA cases. *See, e.g., Savings & Profit Sharing Fund of Sears Employees v. Gago,* 717 F.2d 1038, 1042-43 (7th Cir. 1983)(state domestic relations laws of tenuous concern to federal regulation by ERISA; state court order directing fund to pay part of retirement to former spouse not governed by ERISA); *see generally Carpenters Pension Trust for Southern California v. Kronschnabel,* 460 F. Supp. 978, 981-83 (C.D. Cal. 1978)(community property laws do not regulate "terms and conditions of employee benefits," and therefore, ERISA does not determine effect of participant spouse's divorce on right to receive pension benefits), *aff'd,* 632 F.2d 745 (9th Cir. 1980), *cert. denied,* 453 U.S. 922 (1981).

In one case, a state court found that ERISA did not control a state divorce decree regarding ERISA plan benefits. *In re Marriage of Campa,* 89 Cal. App. 3d 113, 152 Cal. Rptr. 362 (1979), *appeal dism'd for want of a substantial federal question sub nom., Carpenters Pension Trust Fund for Northern California v. Campa,* 444 U.S. 1028 (1980). This Court's dismissal of the appeal in Campa for want of a substantial federal question functions as a decision on the merits that the lower court's conclusion was correct. *See Eichelberger v. Eichelberger,* 584 F. Supp. 899, 900 n.2 (S.D. Tex. 1984).

The Fifth Circuit's use of Texas law as a guide in fashioning federal common law fulfilled the goal of applying federal law to ERISA questions, while giving maximum deference to state domestic relations laws. By its very nature, the issue of marriage

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[6] *Rose* quoted *In re Burrus,* 136 U.S. 586, 593-94 (1890); *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 581 (1979) (quoting *Wetmore v. Markoe,* 196 U.S. 68, 77 (1904)); and *Hisquierdo,* 439 U.S. at 581 (quoting *United States v. Yazell,* 382 U.S. 341, 352 (1966)).

requires resort to state law. For example, determining who is a spouse for purposes of ERISA spousal benefits necessarily requires enforcement of state marriage certificates and divorce decrees. Thus, even under ERISA, federal courts should give deference to state domestic relations laws and avoid a construction of a federal statute that supplants a state court divorce decree.

B. Mrs. Brandon's Waiver Should Be Enforced.

While the Fifth Circuit used Texas law as a guide in reaching its decision, there is nothing peculiar to Texas in its holding: Mrs. Brandon can (and did) waive any rights in Richard's employee benefit programs. Waiver is not a concept unique to Texas or to Section 3.632 of the Texas Family Code. Federal courts can and should use such universal principles of common law in addressing gaps left by ERISA statutory law. *See Saltarelli v. Bob Baker Group Medical Trust,* 35 F.3d 382, 386 (9th Cir. 1994)("ERISA preemption does not mean that general principles of state law are irrelevant to interpretation of ERISA-governed insurance contracts."). Indeed, the only other two circuits to apply federal common law in this circumstance reached the same result: knowing, voluntary waivers in the context of a divorce are enforceable in a later ERISA proceeding. *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown,* 897 F.2d 275 (7th Cir.) (en banc), *cert. denied,* 498 U.S. 820 (1990); *Lyman Lumber Co. v. Hill,* 877 F.2d 692 (8th Cir. 1989)(holding that the waiver in that case did not cover the benefits at issue).

Petitioner argues for a rule of law under which the plan administrator must pay whomever is listed as the primary beneficiary on the designation card regardless of any other facts. Under this rule of law, Mrs. Brandon could not even settle this case now. She would be barred from waiving or releasing her claim in any way, and Respondents would be prohibited from giving effect to any such waiver or release. Prohibiting knowing and voluntary waivers pursuant to agreements like that of the Brandons would lead to "an absurd result," not required or contemplated by ERISA. *See Stobnicki v. Textron, Inc.,* 868 F.2d

1460, 1463 (5th Cir. 1989). "We will not ascribe to Congress the intent of making an unreasonable law — one requiring terminal litigation, rather than favoring settlements as does the general law." *Id.*

It is not surprising that most of Petitioner's cases do not address the question of waiver specifically, but rather, look at ERISA preemption generally.[7] *See Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993) (preemption applies to wills); *Metropolitan Life Ins. Co. v. Hanslip,* 939 F.2d 904 (10th Cir. 1991) (enforceability of Oklahoma statutory law); *Brown v. Connecticut General Life Ins. Co.*, 934 F.2d 1193 (11th Cir. 1991) (holding that ERISA preempted state law causes of action by first wife on divorce decree). Of these three, only *Brown* involved interpretation of a divorce decree, but the issue was the first wife's right to enforce the decree against the second wife, not the right of a potential beneficiary to waive a claim. Indeed, *Hanslip,* which involved interpretation of an Oklahoma statute, stated that the result in that case would have been different if the divorce decree addressed the benefits in question: "[W]e hold that *absent any applicable divorce decree dictating otherwise,* the beneficiary designation on file controls the disposition of this case." *Hanslip,* 939 F.2d at 907 (emphasis added).

Only one case even conceivably supports Petitioner's position on the disputed question of law: enforcement of Mrs. Brandon's waiver. *McMillan v. Parrott,* 913 F.2d 310 (6th Cir. 1990). In that case, the court suggested that simplicity should triumph over all other considerations by enforcing the beneficiary designation on file at the time of death. Petitioner similarly argues that simplicity requires that she win. But she ignores one important fact — the rule followed by the Fifth Circuit in this case is simple. "No . . . additional burdens will be imposed because, under the ERISA statutory scheme, a plan administrator must investigate the marital history of a participant . . . .

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[7] The Fifth Circuit agreed that ERISA preempts the Texas statute. *Brandon,* 18 F.3d at 1325. Petitioner's general preemption allegations are not at issue here.

Under the facts of this case we need only hold that the settlement waiver is effective when it becomes known to the Fund before payment." *Fox Valley,* 897 F.2d at 282.

McMillan is distinguishable because the court there was not faced with the waiver we have here. In *McMillan,* the divorce decree contained a broad release of "any and all claims" that the spouses had against each other. "Even if we were to resolve this question by reference to federal common law, we believe that Barbara Parrott's waiver would not be effective here . . . The waiver provision in Barbara Parrott's divorce settlement, however emphatic, does not specifically refer to her interest as beneficiary of these ERISA plans." *McMillan,* 913 F.2d at 312. By contrast, the Brandon divorce decree specifically refers to employee benefit programs. The Brandon divorce decree makes a specific allocation of property under which Mrs. Brandon received "quite a bit more" than her husband. *McMillan* is inapplicable; the Sixth Circuit has not had to face a situation like the one presented here.

C. No Material Fact Question Exists Here.

Petitioner's waiver does not present a fact question. Petitioner's cases do not address the situation of interpretation of a document where the complaining party admits "we agreed on everything" and that she does not disagree with anything in the document. *See Citizens Bank of Clearwater v. Hunt,* 927 F.2d 707 (2d Cir. 1991)(fraudulent intent in fraudulent conveyance case); *Leberman v. John Blair & Co.,* 880 F.2d 1555 (2d Cir. 1989)(involving ambiguous agreement and interpretation of contractual commitment of good faith); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions,* 538 F.2d 180 (8th Cir. 1976)(reversing summary judgment finding of fraud in the patent process), *cert. denied,* 429 U.S. 1040 (1977). While some cases may require fact-finding to determine waiver, this one does not.

No summary judgment evidence rebutted Mrs. Brandon's admission that the divorce decree reflected her agreement with Richard.[8] No evidence of coercion, duress or other factors that affect voluntariness was proffered. The Fifth Circuit correctly found that Mrs. Brandon's "evidence" opposing the summary judgment motion simply was "insufficient to raise a genuine issue as to the voluntary nature and good faith basis of the waiver." *Brandon,* 18 F.3d at 1327.

The interpretation of that waiver then becomes a question of law for the court. Petitioner, having argued to the Court that federal law should be applied, embarks on a tortured analysis of pre-section 3.632 Texas law in support of her claim that the decree does not apply to insurance because the word "insurance" is not in the decree. Petitioner ignores the fact that both the insurance at issue in this case and Richard's pension plans are "employee benefit plans." *See* 29 U.S.C.A. § 1002(3) (West 1985). Indeed, ERISA would not apply at all unless the benefits at issue were "other benefit programs existing by reason of Richard's employment," the exact language of the decree. Application of Texas law would not yield a different result.[9] Having listed

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[8] For the first time, Petitioner contends that Texas Family Code Section 3.631 requires that the property agreement be in writing. *See* Tex. Fam. Code Ann. § 3.631 (Vernon 1993). Having never raised this issue before, she cannot now raise it in this Court. *Delta Air Lines, Inc. v. August,* 450 U.S. 346 (1981) (refusing to address a question not raised in the court of appeals). Furthermore, such an argument is an impermissible attack on a final judgment. The *Owen* case Petitioner cites involved a direct appeal of the decree, not a collateral attack six years later. *Owen v. Porter,* 796 S.W.2d 265 (Tex. App.-San Antonio 1990, no writ). Finally, where the judgment is an agreed judgment, a separate writing is not needed because "the judgment itself operates as the written manifestation of the parties' agreement." *Giles v. Giles,* 830 S.W.2d 232 (Tex. App.-Fort Worth 1992, no writ).

[9] Indeed, the statute Petitioner seeks to ignore (and which was adopted after the *Parker* case upon which Petitioner relies) mandates a presumption that a pre-divorce designation is invalid unless otherwise provided in the divorce decree. Tex. Fam. Code Ann. § 3.632 (Vernon 1993); *Parker v. Parker,* 683 S.W.2d 889 (Tex. App.-Fort Worth 1985, writ ref'd). Unquestionably, Wanda cannot win if Texas law is applied to this case.

several benefit programs, the use of the phrase "other benefit programs existing by reason of [Richard's] employment" encompassed all remaining employee benefits. If the Brandons had meant to limit the phrase "other benefit programs," they would have done so. Mrs. Brandon gave up the benefits derived from Richard's employment, and he gave up those from hers. Her current protests to the contrary do not create a fact issue. The trial court properly granted summary judgment, and the Fifth Circuit properly affirmed.

II. Federal Courts Must Give Full Faith and Credit to the Divorce Decree.

An independent ground supports the summary judgment granted to Respondents. "Federal law, 28 U.S.C. § 1738, requires that state judgments be given 'the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such state . . . from which they are taken.' " *Wilson v. Wilson,* 667 F.2d 497, 498 (5th Cir.) (quoting 28 U.S.C.A § 1738), *cert. denied,* 458 U.S. 1107 (1982). Mrs. Brandon seeks to collaterally attack a final judgment of a Texas state divorce court which had jurisdiction over her. Although she accepted substantial benefits from the decree (like the house and 280ZX), she now seeks, in essence, to set aside a portion of it in this proceeding in violation of Texas law. *See generally Guion v. Guion,* 475 S.W.2d 865 (Tex. Civ. App.-Dallas 1971, writ ref'd n.r.e.)(cannot retain benefits of contract and at the same time seek to rescind it).

As the district court found in this case, a divorce decree, once final, is not subject to collateral attack. (*Record,* p. 544); *Hardin v. Hardin,* 597 S.W.2d 347 (Tex. 1980); *Walker v. Walker,* 619 S.W.2d 196 (Tex. Civ. App.-Tyler 1981, writ ref'd n.r.e.); *Gago v. Raines,* 268 S.W.2d 724 (Tex. Civ. App.-Galveston 1954, no writ); *Cook v. Cook,* 233 S.W.2d 163 (Tex. Civ. App.-Fort Worth 1950, writ ref'd). Since Mrs. Brandon could not collaterally attack the decree in a Texas court, she should not be permitted to do so here.

The presence of ERISA does not change that result. ERISA preemption does not reach other *federal* laws, such as the full faith and credit clause. 29 U.S.C.A. § 1144(d) (West 1985) ("Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States . . . ."). By giving full faith and credit to the Brandon decree against Mrs. Brandon's attempts to collaterally attack it, this Court avoids any issue of ERISA preemption or waiver. Petitioner has cited no cases holding that the full faith and credit clause does not apply in ERISA cases. This case, therefore, requires no detailed analysis of ERISA and no resolution of any imagined split in the circuits. For this independent reason, the summary judgment was proper, and this Court should deny the petition for writ of certiorari.

CONCLUSION

The Brandon divorce decree constitutes both a waiver enforceable against Mrs. Brandon and a final judgment entitled to full faith and credit and not subject to collateral attack. Petitioner's cases do not mandate a different result. The petition for writ of certiorari should be denied.

Respectfully submitted,

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